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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/493,405	01/28/2000	Mark E. Millet	CISCP124/1691	2202
22434	7590	08/10/2006	EXAMINER	
BEYER WEAVER & THOMAS, LLP P.O. BOX 70250 OAKLAND, CA 94612-0250			SHELEHEDA, JAMES R	
			ART UNIT	PAPER NUMBER
			2623	

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/493,405	MILLET ET AL.	
	Examiner	Art Unit	
	James Sheleheda	2623	

-- The MAILING DATE of this communication app ars on the cover sheet with th correspond nc address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 12 June 2006.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-27 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-27 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- Notice of References Cited (PTO-892)
- Notice of Draftsperson's Patent Drawing Review (PTO-948)
- Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- Notice of Informal Patent Application (PTO-152)
- Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/12/06 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-11 and 13-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Data-Over-Cable Service Interface Specifications (DOCSIS) (SP-RFI-I05-991105) (of record) in view of Schmidt et al. (Schmidt) (5,939,887) (of record).

As to claim 1, DOCSIS discloses a method of testing a cable network (using range requests; see table 7-5 on page 103), using one or more cable modems, while allowing live data traffic at an original frequency (wherein plural modems share a frequency channel and are assigned time slots; see DOCSIS at page 17, lines 31-36

and wherein range requests are assigned to specific time slots in transmission; page 94, lines 21-23), the method comprising:

- (a) identifying a group of time increments (mini-slots; page 48, lines 9-16), associated with live data transmission (periodic range requests taking place after the modem is connected with the network; page 107 at 7.2.4.2, page 112 at 7.2.12 and Fig. 7.13 on page 113), during which cable modems on the network are not scheduled to transmit data (wherein a transmission region is assigned to a particular cable modem for performing a range request; page 94, lines 21-23 and page 107, lines 15-20);
- (b) providing an instruction wherein the instruction instructs a first one of the one or more cable modems to send a first test signal (range request; page 107, lines 15-20) of a first frequency (periodic range requests taking place on the current modem frequency; page 107 at 7.2.4.2, page 112 at 7.2.12 and Fig. 7.13 on page 113) at a first power (wherein range request power adjustments begin at a minimum value; page 107, lines 3-7) during a first one of the time increments (wherein the CMTS must periodically assign a time period to the modem to perform a range request; page 107, lines 15-20) while the first cable modem is on line and engaged in live data transmission (periodic range requests taking place after the modem is connected with the network; page 107 at 7.2.4.2, page 112 at 7.2.12 and Fig. 7.13 on page 113) at the original frequency (wherein the **instruction** to perform range request testing occurs while the modem is continuing to transmit over it's current frequency; page 107 at 7.2.4.2, page 112 at 7.2.12 and Fig. 7.13 on page 113);

(c) measuring the power of the first signal received at a specified location on the cable network (wherein the power must be measured to see if it is within the desired range or must be corrected; see table 7-13 on page 113; page 94, lines 15-19);

(d) providing an instruction wherein the instruction instructs the first cable modem to send a second test signal of a second frequency during an available time increment (wherein the CMTS tells the cable modem to switch to a different channel and send another range request; page 114, line 22- page 116, line 5) while the first cable modem is on line and engaged in live data transmission (during a periodic range request taking place after the modem is connected with the network; page 107 at 7.2.4.2, page 112 at 7.2.12 and Fig. 7.13 on page 113) at the original frequency (wherein the **instruction** to switch channels and perform range request testing occurs while the modem is transmitting over the original frequency; page 107 at 7.2.4.2, page 112 at 7.2.12, Fig. 7.13 on page 113, page 114, line 22- page 116, line 5);

(e) measuring the power of the second signal received at a specified location on the cable network (wherein the power must be measured to see if it is within the desired range or must be adjusted; see table 7-13 on page 113; page 94, lines 15-19), wherein the first and second frequencies belong to different transmission channels (wherein the CMTS tells the cable modem to switch to a different channel and send another range request; page 114, line 22- page 116, line 5).

While DOCSIS discloses measuring the power of the first modem at the first and second frequencies, it fails to specifically disclose recording a power versus frequency spectrum.

In an analogous art, Schmidt discloses a system for testing a cable network (Fig. 2; column 4, lines 10-25) wherein the cable headend will use a spectrum analyzer to measure the signal magnitude (power) levels at each frequency (power versus frequency spectrum, see Fig. 3, step 64; column 7, lines 17-29) and then record the measured values (Fig. 3, step 80; column 7, lines 64-67) for the benefit of allowing the measured values to be recalled and displayed at a later time (column 8, lines 5-7).

It would have been obvious to one of ordinary skill in the art to modify the DOCSIS method to include recording a power versus frequency spectrum, as taught by Schmidt, for the typical benefit of allowing the power and frequency values acquired from testing a cable modem to be recalled and displayed at a later time.

As to claim 2, DOCSIS and Schmidt disclose at the specified location (the CMTS), measuring the power of a plurality of additional signals (range requests) generated by the first cable modem at a plurality of additional frequencies (wherein additional range requests are transmitted at adjusted frequencies until the ranging is successful; see DOCSIS at page 94, lines 12-27).

As to claim 3, DOCSIS and Schmidt disclose wherein the plurality of additional signals generated by the first cable modem are sent during a plurality of additional time increments (wherein each range request has its own assigned time interval; see DOCSIS at page 107, lines 15-20).

As to claim 4, DOCSIS and Schmidt disclose, at a specified location (at the CMTS), measuring (wherein the power must be measured to see if it is within the desired range or must be further adjusted; see DOCSIS at table 7-13 on page 113; page 94, lines 15-19) and recording a frequency versus power spectrum (see Schmidt at Fig. 3, step 80; column 7, lines 64-67) of a second one of the cable modems (wherein range requesting must be performed for all modems; page 107, lines 15-20) during available time increments (wherein a transmission region is assigned to a particular cable modem for performing a range request; page 94, lines 21-23 and page 107, lines 15-20).

As to claim 5, DOCSIS and Schmidt disclose

(i) determining a deviation between the measured power of the first signal at the specified location (wherein the power must be measured to see if it is within the desired range or must be further adjusted; see DOCSIS at table 7-13 on page 113; page 94, lines 15-19), and an expected value of the measured power at that location (wherein the deviation between the received power and the desired power is determined and transmitted to the modem; see DOCSIS at 21-22);

(ii) instructing a first cable modem to send another signal at the first frequency, but this time at a power adjusted from the first power (the CMTS sends a range response instructing just the power to be adjusted; see DOCSIS at page 94, lines 15-27) by the magnitude of the deviation (wherein the power adjust information is the

deviation between the received power and the desired power; see DOCSIS at page 73, lines 21-22); and

(iii) measuring (wherein the power must be measured to see if it is within the desired range or must be further adjusted; see DOCSIS at table 7-13 on page 113; page 94, lines 15-19) and recording the power of the other signal (see Schmidt at Fig. 3, step 80; column 7, lines 64-67), at the specified location on the cable network (wherein measurements are taken at the CMTS in the headend; see DOCSIS at Page 3, Fig. 1-2; page 73, lines 21-22 and page 94, lines 15-19).

As to claim 6, DOCSIS and Schmidt disclose repeating (i)-(iii) a number of times (wherein the ranging request be periodically repeated; page 71, lines 13-15) to obtain statistical data (wherein storing the repeated ranged requests inherently comprises statistical data).

As to claim 7, DOCSIS and Schmidt disclose wherein the testing determines whether the cable network is in compliance with a cable network standard (wherein range request testing verifies compliance with tolerance limits set out in the DOCSIS standard; see DOCSIS page 113, Fig. 7-13).

As to claim 8, DOCSIS and Schmidt disclose wherein the testing determines whether the cable network meets DOCSIS requirements (wherein range request testing verifies compliance with tolerance limits set out in the DOCSIS standard; see DOCSIS

page 113, Fig. 7-13), and wherein instructing the first cable modem to send a first signal comprises sending a DOCSIS ranging request from the first cable modem (wherein the modem sends a range request upon receipt of a Station Maintenance region; see DOCSIS at page 94, lines 21-23).

As to claim 9, DOCSIS and Schmidt disclose identifying a range of frequencies (an upstream channel which inherently covers a ranges) at which the one or more cable modems are to send signals (wherein a channel is identified for a cable modem to send signals over; see DOCSIS at page 100, lines 9-18).

As to claim 10, DOCSIS and Schmidt disclose wherein the range of frequencies spans at least a substantial portion of the upstream bandwidth allotted to cable modems (wherein the range of frequencies is across plural channels; page 114, line 22- page 116, line 5).

As to claim 11, DOCSIS and Schmidt disclose wherein the range of frequencies includes one or more frequencies in a frequency sub-band (wherein the modem uses one of the plurality of possible upstream channels; see DOCSIS at page 100, lines 9-18) over which cable modems on the cable network are currently sending data (wherein plural modems share the channel and are assigned time slots; see DOCSIS at page 17, lines 31-36).

As to claim 13, DOCSIS discloses a method of testing a cable network (using range requests; see table 7-5 on page 103), while allowing live data traffic at an original frequency (wherein plural modems share a channel and are assigned time slots; see DOCSIS at page 17, lines 31-36 and wherein range requests are assigned to specific time slots in transmission; page 94, lines 21-23), the method comprising:

(a) providing an instruction wherein the instruction instructs a first cable modem to send test signals (range requests; page 107, lines 15-20) of a first frequency (1. wherein the CMTS sends UCD messages to determine the transmission frequency of the modem; page 100, lines 3-18; 2. wherein the CMTS tells the cable modem to adjust its frequency and send another range request; page 94, lines 15-19 and 25-27) and power (wherein range request power adjustments begin at a minimum value and increment in set values; page 107, lines 3-7) during a group of time increments (mini-slots; page 48, lines 9-16) at which times cable modems on the network are not scheduled to transmit data (wherein a transmission region is assigned to a particular cable modem for performing a range request; page 94, lines 21-23 and page 107, lines 15-20) while the first cable modem is on line and engaged in live data transmission (periodic range requests taking place after the modem is connected with the network; page 107 at 7.2.4.2, page 112 at 7.2.12 and Fig. 7.13 on page 113) at the original frequency (wherein the **instruction** to perform range request testing occurs while the modem is transmitting over the original frequency; page 107 at 7.2.4.2, page 112 at 7.2.12, Fig. 7.13 on page 113, page 114, line 22- page 116, line 5);

(b) measuring the power of the signal from the first cable modem (wherein the power must be measured to see if it is within the desired range or must be corrected; see table 7-13 on page 113; page 94, lines 15-19);

(c) providing an instruction wherein the instruction instructs a second cable modem (wherein range requesting must be performed for all modems; page 107, lines 15-20) to send test signals of a second frequency (1. wherein the CMTS sends UCD messages to determine the transmission frequency of the modem; page 100, lines 3-18; 2. wherein the CMTS tells the cable modem to adjust it's frequency and send another range request; page 94, lines 15-19 and 25-27) and power (wherein range request power adjustments begin at a minimum value and increment in set values; page 107, lines 3-7) during a second group of time increments (mini-slots; page 48, lines 9-16) at which times cable modems on the network are not scheduled to transmit data (wherein a transmission region is assigned to a particular cable modem for performing a range request; page 94, lines 21-23 and page 107, lines 15-20) while the second cable modem is on line and engaged in live data transmission (periodic range requests taking place after the modem is connected with the network; page 107 at 7.2.4.2, page 112 at 7.2.12 and Fig. 7.13 on page 113) at the original frequency (wherein the **instruction** to perform range request testing occurs while the modem is transmitting over the original frequency; page 107 at 7.2.4.2, page 112 at 7.2.12, Fig. 7.13 on page 113, page 114, line 22- page 116, line 5); and

(d) measuring the power of the signal from the second cable modem (wherein the power must be measured to see if it is within the desired range or must be further adjusted; see table 7-13 on page 113; page 94, lines 15-19),

wherein the first and second frequencies belong to different transmission channels (wherein different cable modems are assigned to different upstream channels which are available at initialization; page 100).

While DOCSIS discloses measuring the power of the signals from the first and second modems, it fails to specifically disclose recording the power.

In an analogous art, Schmidt discloses a system for testing a cable network (Fig. 2; column 4, lines 10-25) wherein the cable headend will use a spectrum analyzer to measure the signal magnitude (power) levels at each frequency (Fig. 3, step 64; column 7, lines 17-29) and then record the measured values (Fig. 3, step 80; column 7, lines 64-67) for the benefit of allowing the measured values to be recalled and displayed at a later time (column 8, lines 5-7).

It would have been obvious to one of ordinary skill in the art to modify the DOCSIS method to include recording the power, as taught by Schmidt, for the typical benefit of allowing the power and frequency values acquired from testing a cable modem to be recalled and displayed at a later time.

As to claim 14, DOCSIS and Schmidt disclose wherein the signals from the first and second cable modems are measured at a single location on the cable network

(wherein the signals are measured at the CMTS; see DOCSIS at Page 3, Fig. 1-2; page 73, lines 21-22 and page 94, lines 15-19).

As to claim 15, DOCSIS and Schmidt disclose wherein the testing determines whether the cable network is in compliance with requirements of DOCSIS (wherein DOCSIS range requests verify compliance with DOCSIS tolerance limits; see DOCSIS page 113, Fig. 7-13).

As to claim 16, DOCSIS and Schmidt disclose identifying a range of frequencies (an upstream channel which inherently covers a ranges) at which the first and second cable modems are to send signals (wherein a channel is identified for every cable modem to send signals over; see DOCSIS at page 100, lines 9-18).

As to claim 17, DOCSIS and Schmidt disclose wherein the range of frequencies spans at least a substantial portion of the upstream bandwidth allotted to cable modems (wherein one of the upstream channels is allotted to the modem; see DOCSIS at page 100, lines 9-18).

As to claim 18, DOCSIS and Schmidt disclose wherein the range of frequencies includes one or more frequencies in a frequency sub-band (wherein the modem uses one of the plurality of possible upstream channels; see DOCSIS at page 100, lines 9-18) over which cable modems on the cable network are currently sending data (wherein

plural modems share the channel and are assigned time slots; see DOCSIS at page 17, lines 31-36).

As to claim 19, DOCSIS discloses a cable network headend (Page 3, Fig. 1-2) allowing testing of the cable network (using range requests; see table 7-5 on page 103), the headend comprising:

(a) an amplitude detector that can measure, at a specified location in the cable network (at the CMTS), the amplitude of a signal received from a cable modem in the cable network (wherein a detector must be present in the headend for the power level of signals at the CMTS to be measured; Page 3, Fig. 1-2; page 73, lines 21-22 and page 94, lines 15-19);

(b) a MAC layer means (page 17, lines 23-39) for identifying a group of time increments (mini-slots; page 48, lines 9-16) associated with live data transmissions at an original frequency (periodic range requests taking place after the modem is connected with the network; page 107 at 7.2.4.2, page 112 at 7.2.12 and Fig. 7.13 on page 113), during which cable modems on the cable network are not scheduled to transmit data (wherein a transmission region is assigned to a particular cable modem for performing a range request; page 94, lines 21-23 and page 107, lines 15-20); and

(c) test logic means (wherein some means must be present to perform the MAC range requests) for providing an instruction wherein the instruction instructs a cable modem on the cable network to send test signals at at least two different frequencies (1. wherein the CMTS sends UCD messages to determine the transmission frequency of

the modem; page 100, lines 3-18 and the cable modem must then periodically transmit range requests at the frequency; page 107 at 7.2.4.2, page 112 at 7.2.12 and Fig. 7.13 on page 113; 2. wherein the CMTS tells the cable modem to then switch to a different channel and send another range request; page 114, line 22- page 116, line 5) during one or more time increments (transmission regions assigned to the cable modem for performing the range requests; page 94, lines 21-23 and page 107, lines 15-20) while the cable modem is on line and engaged in live data transmission (periodic range requests taking place after the modem is connected with the network; page 107 at 7.2.4.2, page 112 at 7.2.12 and Fig. 7.13 on page 113), at the original frequency (wherein the **instruction** to switch channels and perform range request testing occurs while the modem is transmitting over the original frequency; page 107 at 7.2.4.2, page 112 at 7.2.12, Fig. 7.13 on page 113, page 114, line 22- page 116, line 5),

wherein the first and second frequencies belong to different transmission channels (wherein the CMTS tells the cable modem to switch to a different channel and send another range request; page 114, line 22- page 116, line 5).

While DOCSIS discloses measuring the power of the signals at said different frequencies, it fails to specifically disclose recording the power.

In an analogous art, Schmidt discloses a system for testing a cable network (Fig. 2; column 4, lines 10-25) wherein the cable headend will use a spectrum analyzer to measure the signal magnitude (power) levels at each frequency (Fig. 3, step 64; column 7, lines 17-29) and then record the measured values (Fig. 3, step 80; column 7, lines

64-67) for the benefit of allowing the measured values to be recalled and displayed at a later time (column 8, lines 5-7).

It would have been obvious to one of ordinary skill in the art to modify the DOCSIS system to include recording the power, as taught by Schmidt, for the typical benefit of allowing the power and frequency values acquired from testing a cable modem to be recalled and displayed at a later time.

As to claim 20, DOCSIS and Schmidt disclose an upstream receiver (see DOCSIS at page 3, Figure 1-2) in communication with the amplitude detector (wherein measurements are made of received range requests at the CMTS; see DOCSIS at Page 3, Fig. 1-2; page 73, lines 21-22 and page 94, lines 15-19); and a downstream transmitter (see DOCSIS at page 3, Figure 1-2) in communication with the MAC layer means (where MAC messages are sent transmitted to the cable modems; see DOCSIS at page 17, lines 26-29).

As to claim 21, DOCSIS and Schmidt disclose wherein the test logic means selects one or more cable modems in the cable network to generate signals (wherein every cable modem is eventually selected to transmit; see DOCSIS at page 107, lines 15-20) at multiple frequencies (wherein a modem must adjust its frequency and transmit another range request; see DOCSIS at page 94, lines 15-27).

As to claim 22, DOCSIS and Schmidt disclose wherein the test logic means selects multiple cable modems (wherein every cable modem is eventually selected to transmit; see DOCSIS at page 107, lines 15-20) and the individual cable modems reside at separate geographic regions (wherein every individual cable modem must reside at some separate geographic region, e.g. a subscribers home, a room in that home, or simply the physical location the modem itself).

As to claim 23, DOCSIS and Schmidt disclose wherein at least one of the frequencies at which the cable modem sends signals is within a frequency band (wherein the modem uses one of the plurality of possible upstream channels; see DOCSIS at page 100, lines 9-18) over which cable modems on the cable network are currently sending data (wherein plural modems share the channel and are assigned time slots; see DOCSIS at page 17, lines 31-36).

As to claim 24, DOCSIS and Schmidt disclose wherein the test logic means determines one power versus frequency spectra of one cable modem in the cable network (wherein the cable modem power is measured at a known frequency; see DOCSIS at page 73, lines 21-22, page 94, lines 15-19 and page 73, lines 10-11) whether the cable network complies with a cable network standard (wherein DOCSIS range requests verify compliance with DOCSIS tolerance limits; see DOCSIS page 113, Fig. 7-13).

As to claim 25, DOCSIS discloses a cable network headend (Page 3, Fig. 1-2) allowing testing of the cable network (using range requests; see table 7-5 on page 103), the headend comprising:

(a) an amplitude detector that can measure, at a specified location in the cable network (at the CMTS), the amplitude of a signal received from a cable modem in the cable network (wherein a detector must be present in the headend for the power level of signals at the CMTS to be measured; Page 3, Fig. 1-2; page 73, lines 21-22 and page 94, lines 15-19);

(b) one or more processors (wherein a cable headend inherently contains a processor) configured to

(i) identify a group of time increments (mini-slots; page 48, lines 9-16), associated with live data transmissions at an original frequency (periodic range requests taking place after the modem is connected with the network; page 107 at 7.2.4.2, page 112 at 7.2.12 and Fig. 7.13 on page 113), during which cable modems on the cable network are not scheduled to transmit data (wherein a transmission region is assigned to a particular cable modem for performing a range request; page 94, lines 21-23 and page 107, lines 15-20) and

(ii) to provide an instruction wherein the instruction instructs to cause specific cable modems (wherein specific modems receive their own ranging opportunity; page 107, lines 15-20) on the cable network to transmit test signals of specified power and frequency (wherein the CMTS tells the cable modems to adjust their frequency and power to specified values and send a more range

requests; page 94, lines 15-19 and 25-27) while the cable modems are on line and engaged in live data transmission (periodic range requests taking place after the modem is connected with the network; page 107 at 7.2.4.2, page 112 at 7.2.12 and Fig. 7.13 on page 113) at the original frequency (wherein the **instruction** to perform range request testing occurs while the modem is transmitting over the original frequency; page 107 at 7.2.4.2, page 112 at 7.2.12, Fig. 7.13 on page 113, page 114, line 22- page 116, line 5), which signals can be measured by the amplitude detector (wherein the power levels of the signals at the CMTS are measured; Page 3, Fig. 1-2; page 73, lines 21-22 and page 94, lines 15-19), wherein the test frequencies belong to different transmission channels (wherein different cable modems are assigned to different upstream channels which are available at initialization; page 100).

While DOCSIS discloses measuring power and frequency data for the specified cable modems, it fails to specifically disclose memory to record the data.

In an analogous art, Schmidt discloses a system for testing a cable network (Fig. 2; column 4, lines 10-25) wherein the cable headend will use a spectrum analyzer to measure the signal magnitude (power) levels at each frequency (Fig. 3, step 64; column 7, lines 17-29) and then record the measured values (Fig. 3, step 80; column 7, lines 64-67) in memory (Fig. 2, 50) for the benefit of allowing the measured values to be recalled and displayed at a later time (column 8, lines 5-7).

It would have been obvious to one of ordinary skill in the art to modify the DOCSIS system to include memory to record the data, as taught by Schmidt, for the typical benefit of allowing the power and frequency values acquired from testing a cable modem to be recalled and displayed at a later time.

As to claim 26, DOCSIS and Schmidt disclose a transmitter (see DOCSIS at page 3, Figure 1-2) and a receiver (see DOCSIS at page 3, Figure 1-2).

As to claim 27, DOCSIS and Schmidt disclose wherein the power and frequency data are power versus frequency spectra (wherein the data is stored as a power versus frequency spectrum; see Schmidt at Fig. 3, steps 64 and 80; column 7, lines 17-29 and lines 64-67) over a range of upstream transmission frequencies for the specific cable modems (wherein the measured values correspond to a plurality of received signals as the cable modems adjust their frequency and power and send a plurality of range requests; page 94, lines 15-19 and 25-27).

4. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over DOCSIS in view of Schmidt and Cooper et al. (Cooper) (6,772,437).

As to claim 12, DOCSIS discloses a method of testing a cable network (using range requests; see table 7-5 on page 103), using one or more cable modems, while allowing live data traffic at an original frequency (wherein plural modems share a channel and are assigned time slots; see DOCSIS at page 17, lines 31-36 and wherein

range requests are assigned to specific time slots in transmission; page 94, lines 21-23), the method comprising:

(a) identifying a group of time increments (mini-slots; page 48, lines 9-16), associated with live data transmission (periodic range requests taking place after the modem is connected with the network; page 107 at 7.2.4.2, page 112 at 7.2.12 and Fig. 7.13 on page 113), during which cable modems on the network are not scheduled to transmit data at the original frequency (wherein a transmission region is assigned to a particular cable modem for performing a range request; page 94, lines 21-23 and page 107, lines 15-20);

(b) instructing a first one of the one or more cable modems to send a first test signal (range request; page 107, lines 15-20) of a first frequency (wherein the CMTS sends UCD messages to determine the transmission frequency of the modem; page 100, lines 3-18) at a first power (wherein range request power adjustments begin at a minimum value; page 107, lines 3-7) during a first one of the time increments (wherein the CMTS must periodically assign a time period to the modem to perform a range request; page 107, lines 15-20) while the first cable modem is on line and engaged in live data transmission (periodic range requests taking place after the modem is connected with the network; page 107 at 7.2.4.2, page 112 at 7.2.12 and Fig. 7.13 on page 113); .

(c) measuring the power of the first test signal received at a specified location on the cable network (wherein the power must be measured to see if it is within the desired range or must be corrected; see table 7-13 on page 113; page 94, lines 15-19);

(d) instructing the first cable modem to send a second test signal of a second frequency during an available time increment (wherein the CMTS tells the cable modem to switch to a different channel and send another range request; page 114, line 22-page 116, line 5) at the original frequency (wherein the **instruction** to switch channels and perform range request testing occurs while the modem is transmitting over the original frequency; page 107 at 7.2.4.2, page 112 at 7.2.12, Fig. 7.13 on page 113, page 114, line 22- page 116, line 5);

(e) measuring the power of the second signal received at the specified location on the cable network (wherein the power must be measured to see if it is within the desired range or must be adjusted; see table 7-13 on page 113; page 94, lines 15-19).

While DOCSIS discloses measuring the power of the first modem at the first and second frequencies and wherein the one or more modems are selected (wherein every modem is eventually selected and test), it fails to specifically disclose recording a power versus frequency spectrum, identifying separate geographic regions of the cable network for testing and selecting at least one cable modem at each geographic location.

In an analogous art, Schmidt discloses a system for testing a cable network (Fig. 2; column 4, lines 10-25) wherein the cable headend will use a spectrum analyzer to measure the signal magnitude (power) levels at each frequency (power versus frequency spectrum, see Fig. 3, step 64; column 7, lines 17-29) and then record the measured values (Fig. 3, step 80; column 7, lines 64-67) for the benefit of allowing the measured values to be recalled and displayed at a later time (column 8, lines 5-7).

Additionally, in an analogous art, Cooper discloses a system for testing a DOCSIS compliant cable network (column 5, lines 3-25) wherein separate geographic regions of the cable network are identified (particular network neighborhoods; column 7, lines 48-column 8, line 26) and wherein at least one modem at the geographic regions are selected for testing (column 8, lines 8-26) for the typical benefit of allowing the network operator to easily identify and isolate noise sources in the network (column 9, lines 26-67).

It would have been obvious to one of ordinary skill in the art to modify the DOCSIS method to include recording a power versus frequency spectrum, as taught by Schmidt, for the typical benefit of allowing the power and frequency values acquired from testing a cable modem to be recalled and displayed at a later time.

Additionally, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify DOCSIS and Schmidt's system to include identifying separate geographic regions of the cable network for testing and selecting at least one cable modem at each geographic location, as taught by Cooper, for the typical benefit of allowing the network operator to easily identify and isolate noise sources in the network.

Response to Arguments

5. Applicant's arguments with respect to claim 12 have been considered but are moot in view of the new ground(s) of rejection.

6. Applicant's arguments filed 06/12/06, in regards to independent claims 1, 13, 19 and 25, have been fully considered but they are not persuasive.

a. In response to applicant's arguments on page 7, of applicant's response, it is noted that the current amended claims continue to read upon ***instructing*** cable modems to transmit test signals while the modems are engaged in live traffic at the original frequency. More specifically, the clause of "while the first cable modem is on line and engaged in live data transmission at the original frequency" is being interpreted as modifying the limitation of "...wherein the instruction instructs". Thus, the instructing step must take place *while the cable modem is on line and engaged in live data transmission at the original frequency*, and applicant's arguments as to the particular claim interpretation is not persuasive.

In the case of DOCSIS, the ***instructing*** clearly takes place while the modems are engaged in live traffic ***at the original frequency***, as it is the instruction itself which will tell the modems to switch to a different frequency (see page 107 at 7.2.4.2, page 112 at 7.2.12, Fig. 7.13 on page 113, page 114, line 22- page 116, line 5). The instructing step must happen at the original frequency (which the modem is currently transmitting at) as otherwise the modem would not receive the instruction.

Furthermore, it is noted that applicant's arguments in regards to the interpretation of the independent claim language is not actually supported by the specification as originally filed.

More specifically, applicant argues that the current claims require that "a first one of the one or more modems send a first test signal..." while the first cable is on line and engaged in live data transmission at the original frequency. Applicant's specification, however, specifically discloses wherein the modem will switch frequencies from the original frequency to a new frequency (due to receipt of a new UCD instructing the modem to transmit at a new frequency; see page 14, lines 21-32). The modem would then transmit a test signal at the new frequency (page 14, lines 21-37). Finally, the modem would then be instructed to switch back to the original frequency (in response to receipt of another UCD message; see page 14, lines 33-page 15, line 4).

Thus, while the cable modem is described as temporarily switching frequencies during a test signal, and then continuing data transmission at the original frequency *after* sending the test signal, the modem does *not* transmit a test signal *while* engaged in live data traffic at the original frequency, as the modem has ceased transmitting at the original frequency in order to perform the testing. Applicant's arguments are therefore not persuasive.

Conclusion

7. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with

all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

Certificate of Mailing

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Commissioner for Patents
P.O. Box 1450
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Typed or printed name of person signing this certificate:

Signature: _____

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Sheleheda whose telephone number is (571) 272-7357. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

James Sheleheda
Patent Examiner
Art Unit 2623

JS



CHRIS KELLEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600